



0000167330

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

Arizona Corporation Commission
DOCKETED

DEC 17 2015



IN THE MATTER OF THE APPLICATION OF THE
ARIZONA DEPARTMENT OF
TRANSPORTATION TO INSTALL A NEW
GRADE SEPARATED CROSSING AND FOR THE
BNSF RAILWAY TO REMOVE AN EXISTING AT-
GRADE CROSSING AT US 60 AND BELL ROAD
IN THE CITY OF SURPRISE, MARICOPA
COUNTY, ARIZONA, USDOT NO. 025392A.

DOCKET NO. RR-02635B-15-0197

DECISION NO. 75360

OPINION AND ORDER

DATE OF PROCEDURAL CONFERENCE:	August 11, 2015
DATE OF HEARING:	October 7, 2015
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Marc E. Stern
APPEARANCES:	Ms. Michelle Burton, Assistant Attorney General, Transportation Section, on behalf of the Arizona Department of Transportation;
	Mr. Patrick Black, Fennemore Craig, on behalf of the BNSF Railway; and
	Mr. Charles Hains, Staff Attorney, on behalf of the Safety Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On June 17, 2015, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") a request for approval for ADOT to construct a new grade separated crossing and for the Burlington Northern & Santa Fe Railway Company ("Railway") to remove an existing at-grade crossing at US 60 aka Grand Avenue and Bell Road in the City of Surprise ("City"), Maricopa County, Arizona at USDOT No. 025392A ("Application").

On July 9, 2015, the Commission's Railroad Safety Section of the Safety Division ("Staff") filed a request for a procedural conference to address certain concerns of Staff prior to a hearing being

1 scheduled.

2 On August 11, 2015, a procedural conference was held, with ADOT, the Railway and Staff
3 represented by counsel. During the procedural conference the parties discussed Staff's concerns and
4 thereafter requested that a hearing be scheduled to go forward on the Application because ADOT
5 wished to secure a Commission Decision which will approve the Application before the end of the
6 year.

7 On August 12, 2015, by Procedural Order, a hearing was scheduled to commence on the
8 Application on October 7, 2015.

9 On October 7, 2015, a full public hearing was convened before a duly authorized Administrative
10 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railway and Staff were
11 present with counsel. At the conclusion of the hearing, the matter was taken under advisement pending
12 the submission of a Recommended Opinion and Order to the Commission.

13 * * * * *

14 Having considered the entire record herein and being fully advised in the premises, the
15 Commission finds, concludes, and orders that:

16 **FINDINGS OF FACT**

17 1. On June 17, 2015, ADOT filed an Application requesting an Opinion and Order from
18 the Commission approving a Construction and Maintenance Agreement ("CMA") between ADOT and
19 the Railway for ADOT to construct a new grade separated crossing and for the Railway to remove an
20 at-grade crossing at US 60 and Bell Road in Surprise, Maricopa County, Arizona, USDOT No.
21 025392A.¹

22 2. Subsequent to ADOT's initial Application, Staff met with ADOT and the Railway to
23 monitor developments on the proposed project.

24 3. ADOT is seeking Commission approval in order to construct a grade separated crossing
25 on Bell Road that will extend over both US 60 and the tracks of the Railway which runs parallel to US
26 60.

27 _____

28 ¹ At the time the Application was filed, a copy of an executed CMA between ADOT and the Railway was not included with the filing.

1 4. The construction of a grade separated crossing that will extend above the tracks of the
2 Railway will eliminate vehicle conflicts which arise at the at-grade crossing.

3 5. The initial Application filed by ADOT described a phased construction project whereby
4 both the north and south sides of Bell Road would have to be widened, requiring an initial 28 day
5 closure of Bell Road for modifications to be made to the at-grade crossing, and which would result in
6 a lengthy construction project spread out over a number of months with repeated closures in order to
7 construct a grade separated crossing.

8 6. The timeframe required for the total construction project located in the City has been
9 estimated at approximately eighteen months with construction planned to begin in January 2016.

10 7. Subsequent to ADOT's initial Application, ADOT and the Railway reached an
11 agreement to facilitate the construction and advised Staff that the City wanted the project to go forward
12 more quickly. The City indicated that it is willing to proceed with the full closure of the Bell Road at-
13 grade crossing in order to speed up the entire project that will be constructed by ADOT, including the
14 construction of the bridge structure that is to be constructed over and above the tracks.

15 8. To further expedite the planned project for the construction of the grade separated
16 crossing, the City Manager for the City sent a letter to the Director of ADOT and stated that the City
17 "wishes to proceed with the full closure option for the Bell Road-Grand Avenue intersection project
18 scheduled to begin construction in early 2016."²

19 9. According to the Staff Report, in order to accelerate the construction of the grade
20 separated crossing by ADOT, Bell Road will be closed from approximately April 1, 2016 until on or
21 about September 26, 2016, pursuant to the CMA to be finalized between ADOT and the Railway.
22 During this period, traffic will be detoured around that project primarily by means of Dysart, Greenway
23 and Litchfield Roads.

24 10. Mr. Sayeed Hani, ADOT's Railroad Liason, testified that in place of the original phased
25 construction planned for the project, ADOT, the Railway, and the City agreed to a six month closure
26 of the entire at-grade crossing at Bell Road and US 60 in order to speed up the completion of the

27 _____
28 ² A copy of this letter from the City Manager to the Director of ADOT was attached as an Exhibit to the Staff Report in this proceeding.

1 elevated bridge portion of the project which will be built over the Railway's right of way. (Tr. 6-7:19-
2 4)

3 11. Mr. Hani stated that the estimated cost of the entire project is \$66.6 million and that the
4 Railway would be contributing \$741,210 towards the cost of the bridge overpass used for the grade
5 separation. (Tr.8:1-3)

6 12. Mr. Hani further testified that the United States Department of Transportation has
7 already issued a new identification number for the new grade separated crossing of US DOT 929154F.
8 (Tr. 8:2-7)

9 13. Testifying further, Mr. Hani stated that the average daily traffic ("ADT") in 2012 was
10 44,100 vehicles per day at the Bell Road at-grade crossing and that the current level of service ("LOS")
11 is D. (Tr. 7:17-20)

12 14. Mr. Hani stated that presently there are an average of 11 trains per day which utilize the
13 crossing at an average speed of 49 miles per hour and that 19 school buses also use the Bell Road at-
14 grade crossing on a daily basis. (Tr. 7:5-17)

15 15. Mr. Hani stated further that with a full closure of the Bell Road at-grade crossing, traffic
16 will be diverted around the closure mainly on Dysart, Greenway and Litchfield Roads in order to avoid
17 the closure and to relieve traffic congestion on other area roadways. (Tr. 9:2-10)

18 16. Mr. Hani testified that ADOT expects the final CMA for the construction of the project
19 with the Railway will be signed in the near future. (Tr. 15:3-10)

20 17. Mr. Hani stated that ADOT is in agreement with the recommendation made by Staff in
21 the proceeding. (Tr. 10:2-6)

22 18. Mr. Hani indicated that ADOT has not received any objections to the proposed project
23 following public notice that was provided in an area newspaper. (Tr. 14:17-21)

24 19. Mr. Matthew Keim, Manager of Public Projects for the Railway, disclosed that the
25 Railway and ADOT are very close to concluding the CMA for the construction of the grade separated
26 crossing and he anticipates that in approximately 30 days the agreement will be concluded. (Tr. 17:16-
27 20)

28 20. Mr. Kiem voiced a concern whether the at-grade crossing would have to be reopened to

1 public traffic in the event that the grade separated crossing was not completed during the closure period
2 specified in the CMA, or whether traffic would continue to be detoured until the grade separated
3 crossing was completed. (Tr. 18:11-21)

4 21. Mr. Keim explained that the at-grade crossing at Bell Road would have the automatic
5 warning devices removed and would be closed at US 60 to all traffic except construction traffic. The
6 crossing will be maintained as a private construction crossing and used solely by the contractors
7 employed on the project with a railway flagman present. At all other times, the crossing will be closed
8 to public traffic by metal barriers. (Tr. 18-20)

9 22. According to Mr. Kiem, the Railway will have a flagman at the at-grade crossing when
10 it is closed for as long as ADOT requires it for activities in the Railway's right-of-way. (Tr. 24:10-14)

11 23. Mr. Brian Lehman, the Supervisor of the Railroad Safety Section of the Commission,
12 testified that he had prepared the Staff Memorandum which describes the nature of the improvements
13 to be made where Bell Road intersects with the tracks of the Railway and crosses US 60. He further
14 stated that with the construction of a grade separated crossing, public safety will be improved. (Tr.30:6-
15 9)

16 24. Mr. Lehman testified that the presence of a flagman is appropriate under the
17 circumstances which require the removal of the automatic traffic control devices for the construction
18 of the grade separated crossing. (Tr. 30-31:17-3_)

19 25. Further testifying, Mr. Lehman stated that construction traffic will be regulated pursuant
20 to the CMA between ADOT and the Railway with the utilization of a flagman. Based on Staff's
21 analysis, it supports the Application by ADOT for a grade separated crossing at US 60 and Bell Road
22 where the Railway's right-of-way crosses Bell Road in the City.

23 26. Mr. Lehman stated that the construction of a grade separated crossing as proposed by
24 ADOT, and the removal of the at-grade crossing at Bell Road, is consistent with similar grade separated
25 crossings in Arizona and its construction will improve the public's safety. (Tr. 32:4-14)

26 27. Mr. Lehman testified further that if a private crossing is utilized for construction traffic,
27 that a flagman will be present whenever the crossing is utilized under the terms of the CMA between
28 the Railway and ADOT. (Tr. 33:6-12)

28. Staff is recommending that the Application be approved, and also recommending that the closure of the Bell Road at-grade crossing be a full closure rather than a phased closure to facilitate the timely completion of the grade separated crossing.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337, and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. The construction of a grade separated crossing at US 60 and Bell Road is necessary for the public's convenience and safety.

4. The Application should be approved as recommended by Staff.

5. ADOT should file a copy of the executed CMA with the Railway within 45 days of the effective date of this Decision.

ORDER

IT IS THEREFORE ORDERED that the Application of the Arizona Department of Transportation for the construction of a grade separated crossing at US 60 and Bell Road in the City of Surprise, Arizona is hereby approved.

IT IS FURTHER ORDERED that the Arizona Department of Transportation shall file a copy of the executed Construction and Maintenance Agreement with the Burlington Northern & Santa Fe Railway Company within 45 days of the effective date of this Decision.

IT IS FURTHER ORDERED that the Burlington Northern & Santa Fe Railway Company shall complete the removal of the at-grade crossing as described in the Application within 18 months of the effective date of this Decision.

IT IS FURTHER ORDERED that the Burlington Northern & Santa Fe Railway Company shall notify the Commission in writing, within ten days of the commencement and of the completion of the crossing upgrade pursuant to A.A.C. R14-5-104.

...

...

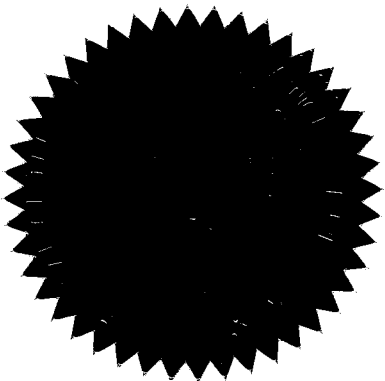
...

IT IS FURTHER ORDERED that after the project is completed, the Burlington Northern & Santa Fe Railway Company will not be required to maintain the crossing in accordance with A.A.C. R14-5-104 because the grade separated crossing will be maintained by the Arizona Department of Transportation or its delegate.

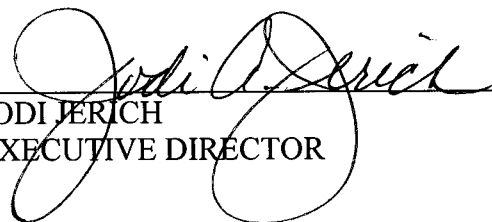
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

	
CHAIRMAN	COMMISSIONER
EXCUSED	
COMM. STUMP	
	
COMMISSIONER	COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 17th day of December 2015.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
MES:tv(ru)

SERVICE LIST FOR:

BURLINGTON NORTHERN & SANTA FE
RAILWAY COMPANY

DOCKET NO.:

RR-02635B-15-0197

James R. Redpath
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
1275 West Washington Street
Phoenix, Arizona 85007

Sayed M. Hani
Railroad and Utility Coordinator
ARIZONA DEPARTMENT
OF TRANSPORTATION
205 S. 17th Avenue, Room 357 MD 618E
Phoenix, AZ 85007

Matthew Kiem
Manager Public Projects
BNSF RAILWAY
740 East Carnegie Drive
San Bernardino, CA 92408-3571

Patrick Black
FENNEMORE CRAIG, P.C.
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016

City of Surprise Attorneys' Office
16000 N. Civic Center Plaza
Surprise, AZ 85374

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Brian Lehman, Chief
Railroad Safety Section of the Safety Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007